LEGISLATIVE COUNCIL

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Territories into or from the Presidencies of Madras and Bombay," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

The Council adjourned at 3 o'Clock.

Saturday, 3rd September 1859.

PRESENT:

The Honorable the Chief Justice, *Vice-President*, in the Chair.

Hon Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon'ble Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

MALABAR OUTRAGES.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill " for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

ABSENCE OF THE GOVERNOR-GENERAL.

The following Message from the Governor-General in Council was read by the Vice-President:—

MESSAGE No. 185.

The Governor-General in Council forwards to the Legislative Council extract of a Resolution passed on the 2nd instant, relative to the absence of the Governor-General from the Council, and to the necessity for vesting the Governor-General with certain powers during such absence.

By order of the Governor-General in Council,

W. GREY,
Secy. to the Govt. of India.

Fort William,
The 3rd September 1859.

The extract from the Resolution referred to was as follows:—

Extract from the proceedings of the Right Honorable the Governor-General of India in Council in the Home Department, under date the 2nd September 1859.

Resolved.—That it is expedient that the Governor-General should visit the North-Western Provinces of the Presidency of Fort Wilnam in Bengal and other parts of India, unaccompanied by any Member of the Council.

That the Honorable Mr. Harington be requested to take charge of, and bring into the Legislative Council, with a view to its being passed into law, a Bill to authorize the Governor-General alone, during his absence, to exercise all the powers which might be exercised by the Governor-General in Council in every case in which the Governor-General may think it expedient to exercise those powers.

(True extract)
W. GREY,
Secy. to the Govt. of India.

MR. HARINGTON moved the suspension of the Standing Orders, to enable him to bring in a Bill " for providing for the exercise of certain powers by the Governor-General during his absence from his Council," and to pass the same at once through its remaining stages, in order that it might receive to-day the assent of His Excellency the Governor-General. This was necessary, as it was the last day on which the Council would sit for some time, and the course now resorted to was adopted with a view to consult the convenience of Honorable Members.

SIR JAMES OUTRAM seconded the Motion, which was carried.

MR. HARINGTON said, in pursuance of the Resolution which had been read from the Chair, and which, in accordance with the requirements of the Act of Parliament, notified the decision of the Council of India that it was expedient that the Governor-General should proceed to visit the North-Western Provinces and other parts of India unaccompanied by any Member of the Supreme Council, he had the honor to lay before the Council a Bill which would enable His Lordship to leave Calcutta, carrying with him the full powers of the Governor General in Council, except, of course, the power of making laws, which he mentioned, as on a former occasion there had been some discussion on this point. It wou'd still, however, be necessary for the Governor-General, wherever he might be, to give his assent to all laws passed by the Council before they could come into operation. This was required by the Act of Parliament already referred to, and could not be dispensed with.

It would be in the recollection of Honorable Members that, when the last Act was passed to admit of His Excellency the Governor-General leaving Calcutta, carrying with him the full powers of the Governor-General in Council, Lucknow and many other parts of the North-Western Provinces were in a state of open rebellion, and that for a time British rule was entirely suspended therein. It was felt desirable, in consequence, with a view to the concentration of Civil authority in the North-Western Provinces, and to unity of action on the part of the Civil Government in aid of Military operations, that the Governor-General should himself proceed and assume charge of the Government of the North-Western Provinces, which would be attended with the further advantage of placing the Head of the Supreme Government in the vicinity of the Head-Quarters of His Excellency the Commander-in-Chief, and at hand to support with the whole weight of the Supreme Government all the Military measures which the Commander-in-Chief might think it expedient to initiate.

In the month of July following the Council was asked to extend the Act passed in the early part of the year for the further term of six months, to enable His Excellency the Governor-General to prolong the period of his absence from the Presidency. In introducing a Bill for this purpose, the present Lieutenant-Governor of Bengal, who was at the time a Member of the Supreme Council, observed that—

"Though the original Act was limited to the short time of six months, he thought he might say that this was done rather on the possibility that events might so fall out that the country might be restored to its usual state of tranquillity in the course of that time than in the expectation that this would be the case. That this had not been the case was manifest. Progress, and great progress had been made; but every Honorable Member was aware that the work had not yet been completed. He did not, of course, speak of the work of re-organization and reconstruction. That most arduous duty which the Government had still before it required deliberation and consultation. He did not speak in consequence of that work not having been yet done; but he spoke of the prompt daily action rendered necessary by the concurrence of daily events in the North-Western Provinces. One point which alone required the continued presence of Supreme Authority in the Provinces, Hono-

Mr. Harington

rable Members must be well aware of. In the Province of Oude much remained to be done. It must be manifest to every body that, for Military operations to be renewed in Oude. the commencement of the dry season was all that was required. These operations, he hoped, would, in one sense, be very different from those which occurred last year. He hoped that we had seen the last of our great and bloody struggles in the field. But a great Military demonstration was very obviously necessary in Oude—a demonstration which would have probably as much a political as a Military character. For that, and for many other reasons, it was quite as requisite still that the Head of the Supreme Government should be on the spot, vested with the powers of the Governor-General in Council, which Act IV of 1858 had given him temporarily, as it was when that Act was passed; and it was necessary therefore for the Council, unless it wished to go backwards, to extend the operation of the Act."

Since the passing of the Act last mentioned, the Governor-General of India in Council had had the satisfaction to announce to the people of India that "war was at an end, that rebellion had been put down, that the noise of arms was no longer heard where the enemies of the State had persisted in their last struggle; that the presence of large forces in the Field had ceased to be necessary; that order was re-established, and peaceful pursuits had everywhere been resumed." A day of General and Solemn Thanksgiving to Almighty God for His signal mercies and protection during the late events had been observed, and it was thought that it would be a fitting sequel to the whole that His Excellency the Governor-General should now visit those parts of the country which had been the scene of the recent disorders; but which were happily again enjoying the blessings of peace and good Government. His Lordship's tour would be a signal manifestation of the return of peace; a season for the public recognition of services rendered during the late mutinies; and a visible assertion of the authority of the Queen's Government. The tour would embrace the recognition, by His Lordship in person as Her Majesty's Viceroy in India, of many new tenures in Oude; the reception of the influential Native Chiefs from the west of the Jumna, in the Cis-Sutlej States, the Punjaub, and elsewhere; His Lordship's direct intercourse with those who lately lent their aid to uphold the British honor, and his per-

sonal acknowledgment of those services, including the confermeat, by His Lordship's hand, of the honors which would be the just reward of those services. An inspection by His Lordship of certain important points, such as Lucknow and Delhi, which were now in a transition state, was also considered desirable, as well as a personal conference with the Lieutenant-Governors of the North-Western Provinces and the Punjaub, and the Chief Commissioner of Oude, in respect to the future Government of those vast and important territories. These were briefly the reasons which had induced His Lordship to consider it advisable that he should visit the Upper Provinces and other parts of India during the approaching cold season. The measure was entirely concurred in by the other Members of His Lordship's Government, and it now only remained for him (Mr. Harington) to ask the Council to pass this Bill, to admit of that measure being carried into effect. It was perhaps proper that he should add that the Bill was word for word the same as that passed in the early part of last year, except that it was proposed that it should continue in force for seven instead of six months, and the words "his Council" were substituted for "any Member of the Council of India" in the Title, Preamble, and first Section of the Bill. This was necessary in reference to the recent change in the Government of India. His Lordship did not propose to leave Calcutta before the first or second week of October, but, as he had said, it was necessary to pass the Bill at once, as it was proposed, at the close of to-day's proceedings, to adjourn the Council for some weeks.

The Bill was read a first time.

MR. HARINGTON moved that the Bill be read a second time.

The Motion was carried, and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

MR. HARINGTON moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

MR. HARINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from certain Members of the Central Committee of the Indigo Planters' Association against the Bill "for the licensing of trades and professions."

SIR CHARLES JACKSON moved that the above Petition be referred to the Select Committee on the Bill.

THE VICE-PRESIDENT said, he was not sure, with reference to the prayer of the Petition, that it could be referred to the Select Committee. The prayer was "not to proceed any farther with the said Bill, but to demand from its author, in substitution for it, if necessary, a project of taxation which shall press equally on all incomes, howsoever derived, of a proper taxable amount, and on all classes of persons." It was open to the Honorable Mover of the Bill to object to the Petition, with that prayer as it now stood, being received.

MR. HARINGTON said, personally he had not the slightest objection to the Petition being received, printed, and referred to the Select Committee on the Bill, if the forms of the Council, in reference to what had fallen from the Chair, should allow the Petition to be so treated.

The Motion was then put and carried.

ADEN.

THE CLERK reported to the Council that he had received from the Home Department a copy of a communication from the Bombay Government, on the necessity of making adequate legal provision for the administration of justice at Aden.

MR. LEGEYT moved that the above communication be printed.

Agreed to.

MADRAS POLICE.

MR. FORBES presented the Report of the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

CUSTOMS DUTIES (BOMBAY).

On the Order of the Day being read for the third reading of the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)—"

THE VICE-PRESIDENT moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of considering proposed amendments therein.

Agreed to.

The Bill was passed after amendments in Sections III and IV; and the Council having resumed its sitting, the Bill was reported.

MR. LEGEYT moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third time.

LAND CUSTOMS (MADRAS AND BOMBAY).

THE VICE-PRESIDENT moved that the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay" be read a third time and passed.

The Motion was carried, and the Bill read a third time.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CUSTOMS DUTIES (BOMBAY).

MR. LEGEYT moved that Sir James Outram be requested to take the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" to the Governor General for his assent.

Agreed to.

MADRAS POLICE.

MR. FORBES said, the Report of the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George" had already been printed, and was in the hands of every Honorable Member; and before he proceeded to move for a suspension of the Standing Orders, he would request Honorable Members to correct a mis-print in that Report. In the third line of paragraph 10, instead of "we were *all* at first unanimous," it should have been "we were *not* at first unanimous."

He was aware that the Council were at all times unwilling to give their assent to Motions for the suspension of the Standing Orders, and, he thought, very properly so; but still there were occasions when it was very necessary that they should give their assent, and the present, in his opinion, was one of them. He was not about to propose to the Council to pass a Bill rapidly through all its stages. The Madras Police Bill had been published for nearly six months, and during the whole of that time not a single communication had reached the Council, except from the Government of Madras, at whose instance the Bill had been introduced, and that Government were now very anxious that the Bill should speedily become law. The head of that Government had it in contemplation to make certain reductions in the Army, which could not be effected until what it was hoped would be an efficient Police had been established by this Bill. As it was generally understood that this was the last time that the Council would sit for some few weeks, he hoped that what he had stated would be considered a sufficient reason to justify the Council in allowing the suspension of the Standing Orders, in order that the Bill might pass through a Committee, and be read a third time that day. The Council now unfortunately consisted of only seven Members, but five of them had been Members of the Select Committee, and had concurred in the Report which he had just presented.

The only other Members were the Honorable and learned Vice-President and the Honorable and learned Judge

opposite (Sir Charles Jackson), but he did not anticipate the slightest opposition from them, as the Bill was not introduced for the purpose of extending or enlarging the ordinary Mofussil law of India, but for the purpose of introducing into India the principles of English law. On these grounds he hoped to receive the support of the Council in now moving that the Standing Orders be suspended, in order that this Bill might be passed through its subsequent stages.

MR. HARINGTON seconded the Motion, which was then carried.

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved the introduction of the following new Section after Section 20 :—

"No person shall be empowered by Government to hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless the person so authorized is a Covenanted Servant of Government, or a European British subject."

MR. HARINGTON said, if they adopted the amendment of the Honorable and learned Chairman, he thought that they would run some risk of violating the Act of Parliament which declared that any Officer of Peace might apprehend a British subject in the Mofussil. This Act did not require that the Officer should be a Covenanted Servant of Government, or a European British subject; and a Deputy Magistrate, though a Native, might, he presumed, exercise the power, there being no doubt that he was an Officer of Peace or Police within the meaning of the Act.

THE CHAIRMAN remarked that the amendment which he had moved proposed merely to empower the Government to do certain things, and it would in no way interfere with the Act of Parliament to which the Honorable Member for the North-Western Provinces had referred.

MR. HARINGTON said, he did not wish to press the point. He proceeded to observe that, in considering the question before the Committee, which was one of very great importance, it would, he thought, be well to go back a little and see what had been proposed in the first instance, and what had afterwards been done. The Code, as originally framed by Her Majesty's Commissioners, was intended to apply to all classes alike, Europeans as well as Natives. Little, if any, distinction was made between the two classes, and to show clearly what was the intention, a Section was introduced, which declared that no person whatever should, by reason of place of birth, or by reason of descent, be excepted from the rules of Criminal Procedure. This was the character of the Code as it was received from England.

In moving the first reading of the Bill, the Honorable and learned Chairman made the following remarks on the part under consideration. He said—

"There was an Article in the Code which involved a question of considerable importance, and would, no doubt, give rise to much conflict of opinion, and become the subject of future discussion. He alluded to Article 8 of Chapter I, which provided as follows :—

'No person whatever shall, by reason of place of birth, or by reason of discent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.'

"This Article would invest the Courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts. No Frenchman or German or Armenian or East Indian was exempt from their jurisdiction. European British subjects alone enjoyed that privilege; and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to the witnesses, who were, frequently, in no way interested in the proceedings.

"The Article to which he referred would bring an offender, whatever his place of birth, or whatever his descent, under the jurisdiction

of the Court within the local limits of which his offence might be committed."

There could be no doubt that the Article on which these remarks were made by the Honorable and learned Chairman gave jurisdiction to all Courts, whosoever presided in them, over European British subjects equally with Natives; and he certainly understood the Honorable and learned Chairman in those remarks strongly to have advocated the principle on which the Article was based, namely that it should be of general application, whereas now they were called upon by the Honorable and learned Chairman to declare not only that none but a Covenanted Servant or a European British subject should have power to commit a European British subject for trial, but that no one else should have power even to arrest him. He need not say that this was a most important alteration. How had the Select Committee on the Code, of which he (Mr. Harington) was a Member, proposed to deal with this question? A reference to the Section, as amended by them, would show that they had no desire to extend the jurisdiction of the Mofussil Courts as regarded European British subjects. They were of opinion that, whatever jurisdiction those Courts already possessed over European British subjects, should be continued to them, but that it should not be enlarged; and in order to remove any doubt that might arise, and to prevent the possibility of a mistake, they proposed to add to Section 3 a proviso to the effect that nothing in that Section should be held to authorize the trial of any person who, in respect of the offence with which he was charged, was not subject to the jurisdiction of the Criminal Courts established by Act of , referring to the proposed Bill for the constitution of the Criminal Courts. So that under the Section, as amended by the Select Committee, no European British subject could be committed by a Native Magistrate, whatever his powers might be. In case, however, of a murder or any other heinous offence being committed by a European British subject, a Deputy Magistrate in charge of a division, although not a Covenanted Servant, or a European British subject, would still have power to arrest the offender and to hold the preliminary investigation. To this it appeared to him (Mr. Harington) no reasonable objection could be made. He must repeat that the object of the Section, as amended by the Select Committee, was not to extend in any way the existing jurisdiction of the Mofussil Criminal Courts over European British subjects, but to maintain it as it now existed, leaving for future consideration the large question as to whether Europeans should or should not be amenable to the jurisdiction of those Courts in the same manner as other classes. When the Bill came before a Committee of the whole Council, the Honorable and learned Chairman himself introduced the words which brought European British subjects within the reach of Section 20. As that Section was originally framed, it carefully debarred the local Courts from committing for trial any party who was not amenable to the local Court of Sessions. To show that such was the case, he would, with the permission of the Council, read the Section. It said—

"It shall be competent to the Government to empower any subordinate Criminal Court to hold the preliminary enquiry into cases triable by the Court of Session, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes."

Under the law, as it now stood, only Magistrates and Joint Magistrates, or persons exercising the full powers of Magistrate, had the power of commitment to the Sessions. The Select Committee proposed to give the Government authority to invest any Subordinate Criminal Court with this power; but they would have limited its exercise to those cases which were triable by the Sessions Court, in which, by no possibility, could a European British subject be concerned, for this simple reason, that the Courts of Sessions had no jurisdiction over that class of persons, and when a commitment in their case was rendered necessary by the character of the offence charged, it must be made to the Supreme Court of Judicature. It was the Honorable and learned

Chairman, and not he (Mr. Harington), who, contrary to the intention of the Select Committee, had introduced the words out of which the present discussion had arisen, and, so far as those words were concerned, he (Mr. Harington) had no objection whatever to their omission. But what he was afraid of was that, if they passed the Section as proposed by the Honorable and learned Chairman, a difficulty might arise in places where there might be no Officer qualified to act as a Justice of the Peace, nor a Magistrate, nor a European British Subject. He did not think it advisable, nor had he any wish that the Courts in the Mofussil, when presided over by natives, should exercise jurisdiction in criminal cases over European British subjects. He would leave them to be tried by European officers only. At the same time he could not shut his eyes to the fact that, if the Honorable and learned Chairman's amendment were carried, it might often happen that a European, who had committed a serious offence, such for instance as murder, might escape because there was no Officer on the spot empowered to arrest him, or to make the preliminary investigation with a view to obtain proofs of his guilt. This he thought would be a very serious evil, and that it would cast a great reflection upon the administration of criminal justice in the interior of the country. Under Regulation XV. 1806 of the Bengal Code, a Zillah or City Magistrate, when he was a Justice of the Peace, might apprehend and commit European British subjects for trial before the Supreme Court, but when he was not a Justice of the Peace, he was required to send the accused to Her Majesty's Justices of the Peace at Calcutta, with a request that the necessary measures might be taken for bringing the accused to trial before the Supreme Court. The Bombay law was somewhat larger. That law spoke of the Magistrate generally, not of a Zillah or City Magistrate; and he believed he was right in stating that in Bombay many Natives held the appointment of Magistrate, while on this side of India Natives could be invested with the full powers of Magistrate. He thought that a reference to Act VII of 1853 would afford them some assistance in determining the powers of Native Magistrates or of other Natives exercising the powers of Magistrate in respect to European British subjects. That Act was passed to extend the jurisdiction of Magistrates under the 52 Geo. III., c. 155 s. 105 in cases of assaults, forcible entries, and other injuries accompanied with force not being felonies, and under its provisions a Magistrate might try, apprehend, and punish European British subjects committing any of the offences just mentioned; but, in order to show that the powers given by the Act were not intended to be vested in Covenanted Servants of the Government or European British subjects alone, the concluding Section distinctly said—

"The powers in such cases given to the Magistrate of the zillah or the district may be lawfully exercised by any Joint Magistrate or other person lawfully exercising the powers of a Magistrate in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends."

Here the power of apprehending and punishing European British subjects in certain cases was expressly given, not to Magistrates and Joint Magistrates only, but to any "other person lawfully exercising the powers of a Magistrate." The question then arose who were the persons other than Magistrates or Joint Magistrate who could lawfully exercise the powers of Magistrate. To this question Act XV of 1843 furnished a ready answer in so far as Natives were concerned. That Act gave the Government the power to appoint Native Deputy Magistrates, and to invest them with the full powers of a Magistrate, so that it was clear that Native Magistrates in cases of the nature of those just described had power not only to apprehend but to punish Europeans. Now, however, they were asked to prevent the Government from authorizing any but Covenanted Servants and European British subjects to apprehend a European British subject and that was his (Mr. Harington's) objection to the proposed amendment. He would repeat that he had not the slightest wish to make European British subjects amenable in Criminal cases to Courts presided over by Native Judges in the least degree more than they were amenable to those Courts by

the existing law, and if the Honorable and learned Chairman would so far alter the wording of the Section as to allow a Native Magistrate or Deputy Magistrate, in the absence of a European Magistrate or Justice of the Peace, to apprehend a European British subject charged with the commission of any crime, and after completing the preliminary investigation, to send him to the nearest Justice of the Peace or Magistrate, being a Covenanted Officer of Government, his objections would be entirely removed.

MR. SCONCE said, he was not yet thoroughly instructed as to the whole scope or possible result of the Section proposed. One of the effects of the law of 1806 was to make an invidious distinction between two classes of subjects. He referred to the Section of that law by which Magistrates, not being Justices of the Peace, had to deal with offences committed by British subjects. That Section said that—

"Whenever a European British subject shall be charged before a Zillah or City Magistrate who has not taken the oaths of qualification as a Justice of the Peace with a criminal offence which, according to the law of England, may not be bailable, and the Magistrate, after making the necessary enquiry on the subject, shall be of opinion that there are grounds for bringing the person accused to trial before the Supreme Court of Judicature, the Magistrate shall send the person accused under safe custody to His Majesty's Justices of the Peace at the Police Office in Calcutta, accompanied by the witnesses against the prisoner, with a letter, stating the nature of the case, and requesting that the Justices at Calcutta will take the necessary measures for bringing the person accused to trial before the Supreme Court of Judicature."

Now that feature of the law he was not desirous to continue: it seemed to him not to be by any means desirable that a European British subject should be arrested by a Magistrate incompetent to commit him for trial, and required to forward the person arrested to a Calcutta Magistrate, who, after all, might or might not think fit to make the commitment. Supposing, however, a Magistrate was under the control of the Justice of the Peace of the same district, some change of the old law, which was certainly necessary, might readily be adopted. A more important question was, whether, under any circumstances, a Magistrate who was not a Covenanted Servant of Government, or a European British subject, should exercise Magisterial powers in cases of offences committed by British subjects. On one point he had great doubt, and, as he had said before, was perfectly uninstructed; and he should be glad to have the opinion of the learned Judge on his right (Sir Charles Jackson) and of the learned Chairman as to how far the proceedings in the creation of Magisterial powers should be sufficient authority for the arrest and commitment of a European British subject, without the issue of a Commission of the Peace. If by an enactment of this Council they were competent to supersede the necessity of Commissioners of the Peace, it would be sufficient for them to confer Magisterial powers which would give jurisdiction and cognizance over all persons. It seemed to him that that would be the effect of the Bill, as it now stood, and was the effect of the Section now proposed, and that a person being a Mofussil Magistrate, though not a Covenanted Officer, might exercise the functions hitherto exercisable alone by a Justice of the Peace.

Then, next to that question, followed another still larger question. It mattered not whether the name of Justice of the Peace was retained or not, if the same functions were still to be invested in Mofussil Officers. But a material question to determine was, whether, in defining those functions, they should wholly except persons who were not European British Subjects or Covenanted Servants from the exercise of the functions of arresting and committing for trial a European British subject. He felt greatly indebted to the Honorable Member opposite (Mr. Harington) for his explanation as to the effect of the present Code, as it now stood, upon that much agitated question, namely the trial of British subjects by natives. He believed that question to have been wholly reserved in their recent discussions upon this Code, and that no Member of this Council had been implicated in any way by committing himself to an opinion in the matter. But he felt that it was very different now that a kindred question had arisen,

not so much as to the form in which jurisdiction over British subjects was to be exercised, but that certain classes of Her Majesty's subjects should not be competent to exercise the functions corresponding with those of a Justice of the Peace. It was no new principle that residents of India, not being British subjects, should exercise the powers of Justice of the Peace. In the Statute 2 and 3 William IV. c. 117, it was provided that—

"Whereas it is expedient that other persons, besides the Covenanted Servants of the United Company of Merchants of England trading to the East Indies, or other British inhabitants of the East Indies, should be capable of being appointed to the office of Justice of the Peace within and for the Towns of Calcutta, Madras, and Bombay," &c.

So that under that Act all natives of this country were competent to be appointed by Government to act and officiate as Justices of the Peace in the Towns of Calcutta, Madras, and Bombay. He was speaking now only of the fitness of the natives of this country to exercise the functions of Justices of the Peace. Therefore the point could not be evaded whether, seeing that so far back as 1832 the Imperial Parliament had declared that native gentlemen were capable of being appointed Justices of the Peace, twenty-seven years later this Council should depart from that principle, and declare that native gentlemen, equally well educated, should not be competent to exercise those functions. He need hardly allude to Section 87 of the renewed Charter Act of the following year, where it was declared that—

"No native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, color, or any of them, be disabled from holding any place, office, or employment under the said Company."

Whether they looked to one Act or the other, the main point was that no born natives of this country, and no person not being a Covenanted Servant, or a European British subject, was qualified to exercise any functions which could be vested in a Justice of the Peace. He could not conceive that, when once the principle was admitted, the principle of appointing native Justices of the Peace, it could now be departed from. It would be a matter of regret that now that the world was so many years older, now that civilization had so much advanced, and now that liberal sentiments had been so largely extended, they should hold that Her Majesty's native subjects were altogether competent to entertain charges against European British subjects. He did not think that the Honorable Member (Mr. Harington) had concluded with a Motion. He (Mr. Sconce) therefore felt disposed to move an amendment in the proposed Clause. He should propose to read the Clause thus:—

"No person exercising the lawful powers of a Magistrate shall hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or shall arrest, hold to bail, or commit any European British Subject, unless the person so authourized be a Covenanted Servant of Government, or a European British Subject, or be specially empowered by the local Government to act on that behalf."

The difference would be that not every inexperienced Magistrate, and not the large number of Deputy Magistrates now appointed to Mofussil Districts, would be competent to hear charges against British subjects, but, looking to the character and competency of the Native Magistracy, the Government should not be declared disqualified from appointing any Native Magistrate from entertaining such charges. With these remarks he begged to move, as an amendment, that the words above read by him be substituted for those proposed by the Honorable and learned Chairman.

ADJOURNMENT.

SIR JAMES OUTRAM moved that the Council adjourn for ten minutes.

Agreed to.

The Council afterwards met pursuant to adjournment.

MESSAGES FROM THE GOVERNOR GENERAL.

SIR JAMES OUTRAM returned to the Council Chamber with the Bill "for providing for the exercise of certain powers by the Governor-General during his absence from his Council,"

the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)," and the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively," and delivered them to the Vice-President, who thereupon announced that the Governor-General had signified his assent to the same.

CRIMINAL PROCEDURE.

The adjourned debate on the Motion for the introduction of a new Section after Section 20 of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

THE CHAIRMAN said, as he understood the effect of the amendment, any person exercising the powers of a Magistrate might be authorized by the local Government to hold a preliminary enquiry into cases triable by a Supreme Court, or to arrest, hold to bail, or commit European British subjects; whereas, as the Section now stood, it was proposed that no person should be empowered by Government to do so, unless he was a Covenanted servant of Government, or a European British subject. The Honorable Member (Mr. Harington) had referred to what he (the Chairman) had stated when this Bill was introduced by him. But he begged to remind the Honorable Member that, when the Bill was brought in, he (the Chairman) did not pledge himself to the whole of its provisions. He had expressly stated that he introduced the Bill as it had been framed by Her Majesty's Commissioners, with the omission of certain Clauses relating to the amalgamation of the Supreme and Sudder Courts, and to the exemption of proceedings in Criminal Courts from Stamp Duties; and he had said that, although he did not coincide with all the recommendations made by Her Majesty's Commissioners, he thought that it would be better to let the Code go forth to the public in the form in which it had been prepared by the Commissioners, in order that it might elicit the opinions and suggestions of all persons competent to advise upon the subject; and that, consequently, he had made no substantial alterations in it. Now the Honorable Member did not act fairly by him (the Chairman) in trying to hold him to the opinion that British subjects should be amenable to the jurisdiction of our Native Criminal Courts. What he had stated then he would repeat now, namely that European British subjects should be subject to the jurisdiction of the Courts of the country; but the question was, how were these Courts to be constituted. If they were properly constituted and were to be assisted by a Jury, he would have no objection. But it was quite a different thing for Englishmen to be tried by a Native Judge with the assistance of a Mahomedan Law Officer, either with or without a Jury. With reference to the observations of Sir Arthur Buller on the occasion of the second reading of the Bill, he (the Chairman) had remarked that—

> "He felt it right, in order to prevent any misapprehension, and not in justification of himself, to remind the Council that, on moving the first reading of the Bill, he had stated that he did not pledge himself to all the provisions which it contained, but that he had inserted the Clauses as they had been framed by Her Majesty's Commissioners, in order that the whole scheme might be fully and fairly before the Council and the Public, and that their opinions regarding it might be elicited. He certainly felt the full force of all that the Honorable and learned Member had said with respect to the Clause which exempted particular classes of public servants from the jurisdiction which the Bill provided for the rest of the community."

This was said in March 1857, before the Mutinies, and he did not think, even if he had pledged himself to the opinion that the Native Criminal Courts should have jurisdiction over Europeans, that any Honorable Member should get up now and hold him to it. If he had expressed such an opinion, supposing even that he had done so, he did not feel himself bound to it after the occurrences of 1857 and 1858. He claimed for himself the right of giving his opinion with reference to facts and circumstances as they might exist at the time. What he had meant to say at that time referred to District Courts. He had expressed no opinion as to how those Courts were to be composed, but he said that it would be

better that Europeans should be tried in those Courts than that they should be brought down from distant places in the heat of the sun to the Supreme Courts for trial. He said so, not only with reference to the persons to be tried, but also with respect to the prosecutors and witnesses. Not long ago a case was sent up from Rangoon, in which the witnesses, after appearing before the Grand Jury, had to return to Rangoon before the prisoner could be put upon his defence before a common Jury. It was with reference to such cases that he (the Chairman) had said that it was better to constitute proper Courts for the trial of Europeans, than to drag an accused person, perhaps an innocent man, down to the Supreme Court. The Honorable Member did not propose to allow a European to be tried by a Native Judge. Then why did he propose to allow a Native Judge to commit him to the Supreme Court for trial, when he might probably be innocent of the offence with which he was charged? If he were an innocent man, witnesses would be obliged to come down to give their evidence for nothing. He remembered a Civil case in which the witnesses had to travel all the way from Agra or Simla. They had to come down in the middle of May, the hottest month in the year, and when they came, they found the case had been withdrawn or postponed, and they were told that they would not be required for about three or four months. They had to pay their own expenses, and while they were so absent their salary was retrenched by the Civil Auditor. Had they been obliged to come down again, they would have been put to the same expense, and the time so occupied would have been thrown away. The matter came before the Government with reference to the refusal of the Civil Auditor to pass their salaries, the Government ordered the Civil Auditor to pass the charge, although, according to the rules of the service, they were not entitled to their salaries. Suppose this had happened in the case of a planter or a private person who could not afford to pay these men, and to employ others to do their work while they were so absent? He (the Chairman) still maintained the opinion that Europeans should be rendered liable to be tried by District Courts, but before the Council made them so liable, let a competent Court be constituted. The Honorable Member did not intend to recommend the trial of Europeans by Natives, but rather twitted him (the Chairman) for introducing words into Section 20 which would subject a European to that trial. He did not deny that the words were put in by him, but how often were words used which did not convey the intention of the person using them? It was not fair to say only that the words had been introduced by him, but the Honorable Member should also have said why he (the Chairman) had introduced them. There were legal difficulties as to the appointment of Justices of the Peace in newly acquired territories, and it was with reference to these difficulties that his amendment had been proposed. Its object was to empower Government to authorize certain persons in such territories to hold the preliminary enquiry into cases triable by a Supreme Court. The persons to be so authorized were those who, in the older Provinces, would, as Justices of the Peace, commit cases for trial in the Supreme Courts, that is to say, Covenanted Servants of Government, or European British subjects. He had since found that the words proposed by him did not properly express his meaning. Surely he was at liberty to amend his mistake.

He thought the Council ought to define what persons should have the power to commit for trial instead of giving to the Government that power, as was now the case by Section 20 and as the amendment of the Honorable Member for Bengal proposed to do. That amendment said—

"No person exercising the lawful powers of a Magistrate shall hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless such person be a Covenanted Servant of Government, or a European British subject, or be specially empowered by the local Government to act in that behalf."

He (the Chairman) objected to the introduction of those words. He believed many Governors held different opinions on such subjects. The Gover-

nor of Madras might hold one opinion, the Governor of Bombay another, and the Lieutenant-Governors of Bengal and of the North-Western Provinces and the Punjab others. They all might differ in opinion, and he therefore thought that the Council should lay down one rule. He would not invest any person who was not a Covenanted Servant of Government, or a European British subject, with the power to commit British subjects for trial by a Supreme Court. The Honorable Member said that the Council would be altering the existing law, and he referred to Regulation XV. 1806, Sections II and III. The words in this Regulation, "Magistrate who has not taken the oaths of qualification as a Justice of the Peace," meant a Magistrate who (being a Covenanted Servant of Government, or a European British subject) might be qualified, but who had not taken the oaths.

The Act of Parliament provided that no person should be appointed a Justice of the Peace unless he was a Covenanted Servant of the Government, or a British Inhabitant. The term "British Inhabitant" must be taken to mean a European British Inhabitant, because at that time a Native was not considered a British Inhabitant, or a British subject. To prevent misapprehension, however, he (the Chairman) had thought it proper to use the words "European British subject" in the Section proposed by him.

Then it was said that another Act of Parliament was passed, allowing Natives to be put into Commissions of the Peace for the Presidency Towns. But, although it might be so, they were not qualified to act for the Mofussil. It was true that this had been done in Bombay, but the Court of Directors had pointed out that this was contrary to the Act of Parliament.

The Honorable Member for Bengal had referred to the Section of the Charter Act, which said that no Native of India was disqualified, as such, from holding any place, office, or employment under Government. The present question related not to disqualification but to qualification. A Native was not disqualified from becoming a Member of the Civil Service. He might go to England, pass his examination, and come out as a Civil Servant. He was not disqualified from becoming a Civil Servant, or, when a Civil Servant, from being appointed a Justice of the Peace. But he was not qualified to be a Justice of the Peace unless he was a Covenanted Civil Servant. In England Barristers of seven or ten years' standing were allowed to hold certain offices. A Native of India was not disqualified to hold those offices, but he would not be qualified to hold them if he was not a Barrister of seven or ten years, as the Act required.

He should not object to a Clause allowing any Native Magistrate or any qualified person, on receiving evidence of an offence committed by a European, to issue a warrant for his arrest, with a proviso that, immediately on his apprehension, the European should be taken before a Justice of the Peace, that is, a Covenanted Civil Servant, or a European British subject. The European could not be more harassed if so dealt with than he would be if seized by a Police Officer on view of offence. Rather than allow Europeans to escape justice, he had no objection to the introduction of such a provision. He did not wish that a European offender should go scot-free. But in such cases whatever was necessary to be done should be laid down by this Council. He protested against giving that power to Government, and thought that the law should be distinct upon the subject. He should adhere to his original proposition, which was intended as a proviso to Section 20, and should object to the amendment proposed by the Honorable Member for Bengal.

MR. HARINGTON said, the Honorable and learned Chairman having charged him with not having dealt fairly towards him in trying to hold him to an opinion which he had expressed in March 1857, to the effect that European British subjects should be made amenable to the jurisdiction of the Native Criminal Courts equally with others; he was compelled to trouble the Council with a few remarks by way of reply to this accusation. His wish always had been and he hoped ever would be to act fairly towards all men, and he did not think he was open to the charge of having acted otherwise on the present occa-

sion. It was not his intention, nor had he any desire, to hold the Honorable and learned Chairman to the opinion referred to. So far from thinking that any Honorable Member was bound by an opinion expressed upon a Bill, whether on its introduction or on the second reading, or at any subsequent stage, he had more than once declared that he considered Honorable Members were at full liberty to change their opinions upon any Bill or any part of a Bill whenever they pleased. It was only the other day that, in alluding to an opinion which had been given by the Honorable and learned Chairman, in which he expressed himself to the effect that, whenever the Government were precluded by their engagement from increasing the jumma of an estate, they were equally precluded by the spirit if not by the letter of their engagement from taxing the owners of the estates for which the jumma was paid, by a per-centage on the rents derived therefrom, he (Mr. Harington) had said that the Honorable and learned Chairman was of course at liberty to change that opinion (assuming for the sake of argument that he had so expressed himself) if he thought proper to do so. He wished to take the present opportunity of correcting a mistake which had been made in respect to what had fallen from him on the occasion just referred to. He was reported to have said that the Government considered it impolitic at the present time to tax the Zemindars of Bengal. What he intended to say, and what he believed he did say, was, not that it was considered impolitic to impose any additional tax upon the landholders under the Perpetual Settlement, but that it was thought impolitic to raise the question whether any new taxes could be laid upon that particular class.

He hoped he had said enough to satisfy the Honorable and learned Chairman that it was not his wish to hold him to any opinions which he had expressed in bringing in the present Bill. He willingly acknowledged that the Honorable and learned Chairman had a full right to change those opinions either now or at any future time. But let them turn to the opinion which the Honorable and learned Chairman had formerly given on the subject under discussion, and see exactly what he had said:—

"This Article," he stated, "would invest the Courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts."

The Honorable and learned Chairman certainly did not say what Courts he intended, but he went on to observe—

"No Frenchman, or German, or American, or Armenian, or East Indian, was exempt from their jurisdiction. European British subjects alone enjoyed that privilege, and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to witnesses who were frequently in no way interested in the proceedings. The Article to which he referred would bring an offender, whatever his place of birth or whatever his descent, under the jurisdiction of the Court within the local limits of which his offence might be committed."

Now, they did not require to be told that all the classes referred to by the Honorable and learned Chairman were amenable under the law as it at present stood to the local Criminal Courts of the country, whether presided over by European or Native Judges, and he submitted therefore that he was fully warranted in saying that the Courts which the Honorable and learned Chairman had in view, and to the jurisdiction of which he thought European British subjects equally with Frenchmen, Americans, Armenians, and Natives should be made amenable, were the Courts existing at the present time all over the country. What other Courts could have been intended, seeing the Bill did not propose to establish any new Courts? and were the Bill to become law to-day its provisions would require to be administered by the existing Courts in the same manner that the provisions of the new Code of Civil Procedure were being administered

in Bengal by the Courts which that Code found in existence at the time it was introduced.

The Honorable and learned Chairman charged him (Mr. Harington) with acting unfairly towards him, but he would ask the Honorable and learned Chairman, was it fair to enquire of him (Mr. Harington) whether he would allow a Native Deputy-Magistrate, a Mahomedan he said, to send down a European British subject all the way from Peshawar or Lahore for trial before the Supreme Court. From the first he (Mr. Harington) had objected to the power of committing European British subjects being given to Native Deputy-Magistrates, in proof of which it was only necessary for him again to refer to the Section as framed by the Select Committee, so that he submitted he was not in the remotest degree open to the charge which was implied in the question put to him by the Honorable and learned Chairman. Let the Section as amended by the Select Committee be compared with the Section as amended by the Honorable and learned Chairman. But the learned Chairman stated that the words which he now proposed should be struck out were introduced by mistake. He (Mr. Harington) accepted that explanation. In making these remarks what he (Mr. Harington) really wished was to guard himself against its being said that the Select Committee had proposed to allow a European British subject to be committed for trial before the Supreme Court by a Hindoo or Mahomedan Deputy-Magistrate, the very contrary being the case. The Honorable and learned Chairman referred to what was said by him when he moved the introduction of the words which it was proposed to strike out. He (Mr. Harington) had looked at the report of the debate which took place when the Honorable and learned Chairman made his Motion, but he found no report of what had fallen from the Honorable and learned Chairman on that occasion, and he was obliged to admit that he had forgotten what was said.

Then the Honorable and learned Chairman objected to giving to the Government the power proposed to be conferred upon it by Section 20; but if the objection was worth any thing, it extended to the whole Section, and consistency would require that the entire Section should be struck out. The Section as framed by the Select Committee did not say that all subordinate Courts should be competent to order commitments, but those Courts only which the Government might so empower. The reason for this was that young men when first appointed were not competent to exercise this large power, and it was therefore proposed to be given to those Officers only who, after a sufficient trial, were considered qualified to exercise it.

SIR CHARLES JACKSON said, he did not wish to follow the Honorable Member who had just sat down at any length into that part of his speech which he had so irregularly introduced, and in which he stated that he had been misunderstood on a former occasion, and had not said that the Government considered it impolitic to tax landholders. He must say for himself, that he so understood the Honorable Member, and he would ask all the Honorable Members around him, whether they did not also understand the Honorable Member as putting the exemption of that class on the ground of political expediency.

But he would not dwell further on that subject. With respect to the question now before the Committee, namely, the expediency of giving Native Magistrates power to investigate charges against European British subjects, and to commit them for trial, he had no doubt that, as an abstract proposition, laws should be made applicable to all classes of the people alike; but that proposition must be taken with certain necessary modifications which the peculiar circumstances of each country might render necessary. In this country there was a small dominant and civilized class, and also a large native uncivilized population, and without entering into any argument on this part of the question—an argument which would raise many questions more or less personal as to the status and character of Native Officers—he was prepared to say that, in the present position of the two races, it was inexpedient that a Native Magistrate should have any jurisdiction whatever over British subjects, and if that was his opinion formerly, he certainly had

seen no reason to change it since the Mutinies. But he would rather put the argument on another ground. Whatever might be said of the Mofussil Courts, it must be admitted that they were as good Courts as natives ever had in this country. The Natives are not worse off, but, on the contrary, are much better off as to Courts than they were under the Native Governments. The British subjects, on the other hand, are subject now to Laws and Courts to which they are, more or less, attached, and the real question was, whether European British subjects should be deprived of their own Laws and Courts, and be placed under other Laws and Courts which were deemed by themselves and generally admitted to be of an inferior kind. He never could understand on what principle British subjects could be expected to acquiesce in the justice of such a proposition. No doubt the Laws and Courts of the country should be alike applicable and open to all classes; but the true solution of the difficulty was to raise the native to the position of the British subject, and not to reduce the British subject to the level of the native. Establish good Courts, and, if possible, a good Jury, in the Mofussil, and you would at once destroy all pretence for the exemption of British subjects from their jurisdiction; but until this was done, he should oppose every proposition for placing British subjects under the criminal jurisdiction of the present Mofussil Courts. Before he sat down he would refer to an argument of the Honorable Member on his left (Mr. Sconce), who had referred to the Statute of 2 and 3 Wm. IV as authorizing the appointment of Native Justices of the Peace, and in fact establishing the principle that they were competent to discharge such duties. But their jurisdiction was confined by those Acts to the Presidency Towns, where they had little power, and where the Press and a large European community would operate as a check, and that restriction on the power of the Government to appoint Native Justices of the Peace spoke volumes as to the intention of the Legislature, and showed clearly that they were not then considered qualified to discharge the duties of Justices of the Peace in the Mofussil.

As he understood the present discussion, there appeared to be no difference between the views of the Honorable and learned Chairman and the Honorable Member (Mr. Harington), except as to the point of arrest. Neither of the Honorable Gentlemen wished to subject European British subjects to the jurisdiction of Native Magistrates, and all that the Honorable Member for the North-Western Provinces wanted, was a provision enabling Native Magistrates to arrest. He thought this difference might easily be reconciled by some provision on the subject, but he suggested that it would be better to make such provision in the 3rd Section, rather than in the 20th Section of the Act.

MR. SCONCE'S amendment being put, the Council divided—

Aye 1.	*Noes* 6.
Mr. Sconce.	Sir C. Jackson.
	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	Sir James Outram.
	The Chairman.

So the Motion was negatived.

The original question being put, the Council divided—

Ayes 4.	*Noes* 3.
Sir C. Jackson.	Mr. Sconce.
Mr. LeGeyt.	Mr. Forbes.
Sir James Outram.	Mr. Harington.
The Chairman.	

So the Section was carried.

Section 3 provided as follows:—

"No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal procedure, provided that nothing in this Section shall be held to authorize the trial before any Criminal Court of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court."

THE CHAIRMAN moved the insertion of the words "arrest or commitment for trial" after the word "trial" in the Proviso.

MR. HARINGTON moved by way of amendment that the word "arrest" be omitted from the question.

The amendment being put, the Council divided—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the amendment was carried, and the Section as amended then passed.

MR. SCONCE moved the introduction of the following new Section after Section 20*a* :—

" Nothing in the foregoing Section shall be taken to prevent any Officer exercising the lawful powers of Magistrate from hearing a complaint against a European British subject, and issuing a warrant of arrest, or holding to bail any European British subject so charged, with a view to the complaint being investigated before a Magistrate authorized as provided in the last foregoing Section."

The Council divided—

Ayes 5.	*Noes* 2.
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the Section was carried.

MR. LEGEYT moved the introduction of the following new Section after the above :—

" When a European or American has been arrested or held to bail under a warrant issued by an Officer not being a Covenanted Servant or a European British subject, such Officer shall forthwith forward him to the Magistrate of the District, or to some other Officer exercising the powers of a Magistrate, who is a Covenanted Servant, or a European British subject."

MR. HARINGTON moved by way of amendment to insert the words " if the person arrested shall claim at the time of his arrest to be a European British subject" after the word " forthwith."

The amendment being put, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. LeGeyt.
	The Chairman.

So the amendment was negatived, and the Section as originally proposed was carried.

Section 232*a* provided as follows :—

" If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority with the concurrence of the Judge, the accused shall be acquitted; if the Jury be equally divided in opinion, the Judge shall decide whether the accused shall be convicted or acquitted."

MR. HARINGTON moved that this Section be omitted and the following substituted for it :—

" If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Court concur in such finding, the accused shall be convicted. If the Jury be equally divided in opinion, the Court shall decide whether the accused shall be convicted or acquitted. In all other cases the accused shall be acquitted."

Agreed to.

MR. LEGEYT moved the introduction of the following new Section after Section 270 :—

" It shall be lawful for the Sudder Court to call for and examine the records of any Court of Session for the purpose of satisfying itself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Court. If the Sudder Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the same, and pass such judgment and sentence as to the Court shall seem right, or, if it deem necessary, may order a new trial."

Agreed to.

MR. LEGEYT moved the introduction of the following Section after the above :—

" It shall be at all times lawful for the Sudder Court or a Court of Session, and for a Magistrate or other Officer exercising the powers of a Magistrate, to call for and examine the records of any Court subordinate to a Court of Session, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Courts. If the Court or Magistrate shall be of opinion that the sentence or order is contrary to law or evidence, the Court or Magistrate shall annul the same and pass such judgment and sentence as shall seem right, provided that in no

case the sentence be more severe than the sentence originally passed."

After some discussion the Motion was negatived.

Section 237 provided as follows :—

" Except in the cases referred to in Section 106, a Court of Session, as a Court of original Criminal Jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by a Magistrate or other Officer specially empowered by this Act or any other law to make commitments to such Court. No Judge of a Court of Session shall be precluded from sitting in the trial of any case before such Court by reason of the commitment in such case having been made by himself."

MR. SCONCE moved the omission of the words " No Judge of a Court of Session shall be precluded from sitting in the trial of any case before such Court by reason of the commitment in such case having been made by himself."

The Motion was carried, and the Section as amended then passed.

The postponed Section 271 was passed as it stood.

THE CHAIRMAN went back to Section 270*a*, and proposed amendments therein, which were carried.

The postponed Sections 272 to 275 were passed as they stood.

THE CHAIRMAN moved the introduction of the following Section after Section 275 :—

" An appeal shall lie in all cases of conviction by the Magistrates in the Mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge, and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, to the Sudder Court. Provided that it shall not be competent to the Sudder Court to reverse the verdict of a Jury on the facts of the case in a case tried by Jury before the Session Court; but such verdict shall not prevent the Sudder Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court."

The question being put, the Council divided—

Ayes 3.	*Noes* 4.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
The Chairman.	Mr. Harington.
	Sir James Outram.

So the Section was negatived.

Section 276 provided as follows :—

" Any person convicted by a judgment of any Criminal Court, from which an appeal lies to a higher Court under any law for the time being in force, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the proceedings of the Lower Court, and confirm or alter or reverse the finding and sentence of such Court, but not so as to enhance the punishment beyond what such Court is competent to award; provided that when a Court of Session shall consist of more than one Judge, no judgment of a Magistrate shall be reversed or modified, but by the concurrent opinion of two Judges of the Court of Session."

MR. LEGEYT moved the insertion of the words " subordinate to a Court of Session" after the words " Criminal Court."

The question being put the Council divided—

Ayes 4.	*Noes* 3.
Mr. Forbes.	Mr. Sconce.
Mr. LeGeyt.	Sir Charles Jackson.
Mr. Harington.	The Chairman.
Sir James Outram.	

So the Motion was carried.

MR. LEGEYT moved to omit the words

" Beyond what such Court is competent to award; provided that when a Court of Session shall consist of more than one Judge, no judgment of a Magistrate shall be reversed or modified, but by the concurrent opinion of two Judges of the Court of Session,"

and to substitute the word " awarded" for them.

Agreed to.

MR. SCONCE moved the addition of the following proviso :—

" Provided that an appeal shall lie from a judgment of the Court of Session to the Sudder Court upon any point of law that may arise upon that judgment."

The Motion was carried, and the Section as amended then passed.

The postponed Sections 277 to 283 were passed as they stood.

Verbal amendments were then made in Section 258, on the Motion of the Chairman.

The postponed Section 286 was passed as it stood.

The further consideration of the Bill was postponed on the Motion of the

Chairman, and the Council resumed its sitting.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE gave notice that he would, at the next Meeting of the Council, move the second reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

The Council adjourned at 7 o'Clock, on the Motion of Sir James Outram, to Tuesday, the 6th instant, at ½ to 11 o'Clock.

Tuesday, September 6, 1859.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the Bengal Chamber of Commerce against the Bill "for the Licensing of Trades and Professions."

MR. HARINGTON moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the second reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

The Motion was carried, and the Bill read a second time.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 260 prescribed the form of verdict in trials by Jury.

After some verbal amendments, Mr. Harington moved the addition of the following words to the Section:—

"When the Jury are equally divided in opinion, the verdict shall state specially the division of opinion."

The Motion was carried, and the Section as amended then passed.

The postponed Section 261 was passed after verbal amendments.

The postponed Section 262 prescribed the form of finding and sentence.

After some verbal amendments, Mr. Harington moved the introduction of the following Clause into the Section:—

"When the Jury are equally divided in opinion, the finding of the Jury shall state specially the division of opinion, and the finding and sentence of the Court shall then be recorded in the following form or to the same effect:

The Court concurs with the Jurors who have found that Z is guilty of the offence specified in the charge, namely, that he has committed &c. &c., and the Court directs that the said Z be [*sentence*]; or *(as the case may be)*—

The Court concurs with the Jurors, who have found that Z is not guilty of the offence specified in the charge, namely, that Z has committed &c., &c.; and the Court directs that the said Z be discharged."

The Motion was carried, and the Section as amended then passed.

Verbal amendments were made in Sections 267, 270, and 274.

MR. SCONCE proposed an amendment in Section 276. He said, this Section provided for appeals from judg-